IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 679 OF 2004
IN
MOTOR ACCIDENT CLAIM PETITION NO. 750 OF 1999

The Municipal Commissioner,
Municipal Corporation of Gr.Mumbai .. Appellants

Vs.

Shri Anil Damodar Dalvi .. Respondnet.

CORAM: A.S. OKA, J.
DATE : 2nd September, 2004.

JUDGEMENT :-

1. Admit. Learned Counsel for Respondent waives service. Considering the facts and circumstances of the case, taken up for hearing forthwith.

2. The Appellant has taken exception to the Judgement and Award dated 9th January, 2004 passed by the Member of the Accident claims Tribunal at Thane in favour of the Respondent. The accident took place on 20th October, 1997 when the Respondent was riding a motorcycle and was proceeding on Amnegaon road. At that time, a bus belonging to the Appellant Corporation came from opposite direction in fast speed and it gave dash to the motorcycle of the Respondent. As a result, he fell down and sustained grievous injuries. He suffered a fracture of right Femur, right tibia and fibula, right upper lateral tibia condyle and right pelvis as well as injuries to frontal region, ear and nose. The permanent disability

suffered by him is quantified at 36%. His claim was in the sum of Rs.2,50,000/-.

3. The Appellant filed a written statement. However, the Appellant did not contest the claim further. The Tribunal awarded compensation of Rs. 1,75,000/- in favour of the Respondent with interest at the rate of 6% per annum from the date of Claim Petition till the date of realisation.

4. The learned Counsel appearing for the Appellant submitted that as the Appellant has not contested the matter after filing written statement, order of remand may be passed. He submitted that the compensation awarded to the Respondent is excessive. He pointed out there was no evidence of precise income of the Respondent and therefore the compensation awarded on account of loss of future prospects of earning of Rs. 96,000/- is excessive. He pointed out that the compensation awarded under all the heads is exorbitant.

5. The learned counsel for the Respondent has referred to the impugned Judgment and Award. He pointed out the evidence of Orthopaedic surgeon examined by the Respondent. He also pointed out that the income of the Respondent is taken by the Tribunal as Rs.5,000/- to Rs.6,000/- though there was material on record to show that the Respondent was earning much more than that amount. He also pointed out that interest at the rate of 9% ought to have awarded by the Tribunal.

6. I have considered the rival submissions. In sofar as the injuries suffered by the Respondent is concerned, the Respondent has examined Dr. Dilip Koparde and Dr. Gaikwad who are Orthopaedic surgeons. Dr.Dilip Koparde has described in his evidence the injuries suffered by the Respondent. The Respondent suffered four fractures and a metal rod was inserted in his body. Dr. Koparde stated that the Respondnet will require atleast Rs.10,000/- to Rs.15,000/- for a surgery to remove the rod. Dr. Gaikwad who examined the Respondent subsequently to assess the disability stated that "He sustained fracture or right Femur, Tibia Fibula and Pelvic as well as Fracture of upper lateral Condyle of Tibia". There is no reason to disbelieve the evidence of two qualified Orthopaedic surgeons. Therefore, no fault can be found with the Tribunal if permanent partial disability suffered by the Respondent was accepted as 36%.

7. In sofar as the prayer for remand is concerned, it must be noted that the present appeal arises out of a claim for compensation made by the Respondent on account of serious injuries sustained by him. The accident took place in the year 1997 when the age of the Respondent was 22 to 23 years. The Claim Petition was filed in the year 1999. The written statement was filed by the Appellant and the claim petition was decided in January, 2004. This is not a case where the Tribunal has passed the Award only on the basis of default on the part of the Appellant Corporation to defend. Oral Evidence has been recorded. The documentary evidence has been

considered. Therefore, it will be unjust to pass order of remand after lapse of seven years from the date of accident especially when the Respondent has suffered 36% permanent partial disability.

8. In sofar as the negligence is concerned, the oral evidence of the Respondent is consistent with his pleadings. He has stated that at the time of accident he was driving his motorcycle by the left side of the road and he was on the main road. He stated that the bus belonging to the Appellant suddenly came from the service road. Looking to the nature of the accident, the Tribunal recorded a finding that the driver of the bus was negligent. Copies of the spot panchanama and the F.I.R. are also placed on record before the Tribunal. Therefore, no fault can be found with the finding recorded by the Tribunal as regards negligence.

9. The claim for expenditure on medical treatment is supported by documentary evidence. A nominal compensation awarded on account of attendant charges, special diet and conveyance. Looking to the four fractures suffered by the Respondent and the disability suffered by him, the compensation of Rs.36,000/- awarded by the Tribunal on account of permanent disability cannot be said to be excessive. Dr. Koparde who treated the Respondent has stated that the Respondent will be required to spent Rs.10,000/- to Rs.15,000/- for undergoing surgery for the purpose of removing the rod inserted in his body. On this count the Tribunal has

awarded only Rs.10,000/-.

10. On the question of income of the Respondnet, the Tribunal has noted that the Respondent has not produced copies of income tax return. The only evidence led by the Respondent is that he was carrying on business and was reaping some income. The case in the Claim Petition is that the income of the Respondent was Rs.10,000/-p.m.. The learned member of the Tribunal, for computing the actual loss of income has taken the income at the rate of Rs.5,000/- per month. As stated earlier, there is no evidence of actual income of the Respondent on the record. while calculating the loss of future prospects of income, the yearly loss is taken by the Tribunal as Rs.12,000/-. Considering the permanent partial disability of 36% though the said amount cannot be said to be exorbitant. Though there was an absence of clear evidence of the income of the Respondent, it cannot be disputed that the Respondent was entitled to receive some compensation under the said head as he was carrying on business and his age was only 23 years at the time of accident. In absence of any specific evidence of income, it is obvious that compensation of Rs.96,000/- awarded by the Tribunal under the said head is on the higher side.

11. While deciding this Appeal what what is required to be seen is whether the total compensation awarded is just and proper. Therefore, what is required to be considered is as to what was the entitlement of the Respondent. It appears that

the compensation awarded under the heading of loss of future prospects of income is on a higher side by a sum of Rs. 30,000/- to Rs.40,000/-. Further it is to be noted here that as per the recent judgments of the Apex Court the Respondent was entitled to interest at the rate of 9% per annum. However, the Tribunal has committed an error by awarding interest only at the rate of 6% per annum. If interest would have been granted at the rate of 9% per annum, the Respondent was entitled to a further amount of about Rs.30,000/- on account of interest. Therefore, taking over all view of the matter, the compensation which is awarded by the Tribunal is just and proper and no interference is required. First Appeal is dismissed with no orders as to costs.

sd/-

JUDGE

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE JURISDICTION

FIRST APPEAL NO. 679 OF 2004
IN
MOTOR ACCIDENT CLAIM PETITION NO. 750 OF 1999

DATE OF JUDGEMENT: 2ND SEPTEMBER, 2004

FOR APPROVAL OF

HON'BLE SHRI. JUSTICE ABHAY S. OKA :

No.

1. Whether Reporters of local papers may be allowed to see the judgment?

2. Whether to be referred to the Reporters or not?

3. Whether the lordship wish to see the fair copy of the judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder?

5. Whether it is to be circulated to all the Civil Judges?

6. Whether the case involves an important question of law and whether the copy of the judgment should be sent to Nagpur, Aurangabad and Goa Offices?

****